

OCT 21 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

BRUCE MCVEIGH,

Plaintiff - Appellant,

v.

CITY OF RENO, a municipal corporation,

Defendant - Appellee.

No. 02-17144

D.C. No.

CV-01-00275-DWH(VPC)

MEMORANDUM*

**Appeal from the United States District Court
for the District of Nevada
David Warner Hagen, District Judge, Presiding**

Submitted October 8, 2003
San Francisco, California**

Before: BEEZER, KLEINFELD, Circuit Judges, and Jones, District Judge.***

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a)(2).

*** The Honorable Robert E. Jones, United States District Judge for the District of Oregon, sitting by designation.

Bruce McVeigh appeals the district court's summary judgment in favor of the City of Reno ("Reno") on his age discrimination and retaliation claims. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

The facts are well known to the parties and we do not recite them here. McVeigh presents no evidence of age discrimination in the Reno fire chief's decision not to hire him from a list of eligible and qualified firefighter candidates. See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1281 (9th Cir. 2000). The fire chief's comments during one of McVeigh's interviews were innocuous and are insufficient for a prima facie case of discrimination in the hiring decision or for showing the chief's decision was pretext. The fire chief had discretion to hire any qualified firefighter based on a personal interview and the chief's confidence in the candidate. McVeigh's age discrimination claim is without merit.

McVeigh's supplemental complaint added a retaliation claim after a fourth unsuccessful job interview with the Reno fire chief that took place after he filed this action. Again, the evidence fails to show a causal link between the fire chief's discretionary decision to choose among qualified firefighter candidates and McVeigh's suit. See Passantino v. Johnson & Johnson Consumer Products, 212 F.3d 493, 506 (9th Cir. 2000). Moreover, McVeigh was one of the few candidates who received an interview. Therefore, McVeigh's retaliation claim fails.

AFFIRMED.